

fact sheet

employment standards act



HOW ARE YOU COVERED BY THE *ESA*?

What is the purpose of the *Employment Standards Act, 2000 (ESA)*?

The *ESA* sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

What jobs are covered by the *ESA*?

Most employees and employers in Ontario are covered by the employment standards set out in the *ESA*.

What work is not covered by the *ESA*?

Most employees and employers in Ontario are covered by the *ESA*. However, the *ESA* does *not* apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work under a program approved by a college of applied arts and technology or university
- A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the *Ontario Works Act, 1997*
- Police officers (except for the Lie Detectors part of the *ESA*, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the *ESA*.

For a complete listing of other work categories not governed by the *ESA*, please check the *ESA* and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the *ESA*.



What jobs are covered by the *ESA*, but with exceptions?

Certain industries and employees are covered by the *ESA*, but exempt from (i.e., not covered by) some sections. Or they are covered by the *ESA*, but subject to special rules.

The chart in this fact sheet lists industry/job categories where there are exceptions to the *ESA*'s usual rules. It also cross-references 10 key minimum standards of the *ESA*, and whether those minimum standards (or any special rules) apply to each industry/job category. They are:

- Minimum wage
- Hours of work
- Daily rest periods
- Weekly/bi-weekly rest periods
- Eating periods
- Overtime pay
- Paid public holidays
- Vacation with pay
- Pregnancy, Parental, Family Medical and Emergency leave
- Termination notice/pay, Severance pay.

If you need more details than the chart provides, refer to the written sources and contacts listed in *Need More Information?* at the end of this fact sheet.

Here is an example that shows how to use the chart and other sources to get the information you need about industry-specific and job-specific exemptions, and special rules.

A typical case:

Jane works in a hospital. She wants to find out which of the 10 key minimum standards of the *ESA* apply to her.

- Jane begins by looking under "hospital employees" in the left-hand "job categories" column of the chart.
- Then, Jane checks the right-hand " minimum standards " column. It tells her that hospital employees are covered by all 10 of the key minimum standards of the *ESA* covered by the chart. But it also says that the *rules* for paid public holidays are different for employees in her category.
- Jane wants to know more about when she might be required to work on a public holiday. So she refers to *Need More Information?* at the end of this Fact Sheet and decides to get the "Public Holidays" Fact Sheet from the Ministry of Labour web site. It explains that hospital employees can be required to work on a public holiday—when the

holiday falls on a day that is ordinarily a working day for them, and they are not on vacation.

Specifically, what are the industries and jobs that are exempt from sections of the *ESA*—or have special rules?

The following chart provides an overview of:

- industries and jobs that are exempt from (i.e., not covered by) minimum standards of the *ESA*, and/or have special rules, and
- whether any of the 10 key minimum standards of the *ESA* and/or special rules apply to each of the industry/job categories.

The chart also lists the 10 key minimum standards of the *ESA* (see *Minimum Standards* column).

Industries and Jobs with *ESA* Exemptions and/or Special Rules

Job Categories	Minimum Standards									
	1	2	3	4	5	6	7	8	9	10
● = covered ○ = NOT covered ● = special rules apply										
1 - Minimum Wage 2 - Hours of Work 3 - Daily Rest Periods 4 - Weekly/Bi-weekly Rest Periods 5 - Eating Periods 6 - Overtime										
7 - Paid Public Holidays 8 - Vacation With Pay 9 - Pregnancy, Parental, Family Medical and Emergency Leave 10 - Termination Notice/Pay, Severance Pay										
Ambulance drivers, ambulance drivers' helpers and first aid attendants on an ambulance	●	●	●	●	●	○	●	●	●	●
Construction employees (on-site and related off-site)	●	○	○	○	●	○	○	●	●	○
Overtime pay $1\frac{1}{2} \times$ regular rate for each hour in a work week in excess of:										
Road building: streets, highways and parking lots (on-site) excluding on-site road maintenance										
-- 55 hours, with limited averaging over two successive work weeks.										

Job Categories	Minimum Standards									
	1	2	3	4	5	6	7	8	9	10
● = covered ○ = NOT covered ○ = special rules apply										
Road building: bridges, tunnels, retaining walls in connection with streets or highways (on-site employees) -- 50 hours with limited averaging over two successive work weeks.										
Sewers, watermains and incidental work, including guarding the site: -- 50 hours.										
Public Holidays Exempted if receiving at least 7.3 per cent of wages for vacation pay or holiday pay										
Construction employees: Road maintenance (on-site)	●	○	○	○	●	○	○	●	●	○
Overtime Pay: 55 hours, with limited averaging over two successive weeks										
Public Holidays: Exempted if receiving at least 7.3 per cent of wages for vacation pay or holiday pay										
Termination notice/pay and severance pay: Entitled to notice of termination. Exempted from severance pay.										
Continuous operation employees (e.g. oil refineries, steel works, breweries)	●	●	●	●	●	●	●	●	●	●
Public Holidays: In some cases, may be required to work on a public holiday - see the Public Holidays Fact Sheet.										
Crown employees	○	○	○	○	○	○	○	●	●	●
Domestic workers employed by a householder. Provides services in the household or care, supervision or personal assistance to children, senior or disabled members of the household. <i>Does not include</i> a sitter who provides care, supervision or personal assistance to children on an occasional, short-term basis.	○	●	●	●	●	●	●	●	●	●

Job Categories	Minimum Standards									
	1	2	3	4	5	6	7	8	9	10
● = covered ○ = NOT covered ● = special rules apply										
Minimum Wage: No deductions for non-private room. For a list of permitted deductions - see the Minimum Wage Fact Sheet. (Also see Homemakers)										
Drivers and drivers' helpers on a 'for hire' delivery vehicle for local cartage	●	●	●	●	●	○	●	●	●	●
Overtime pay: $1\frac{1}{2} \times$ regular rate for each hour in excess of 50 in a work week.										
Drivers of highway transport trucks ('for hire') operated by holders of <i>Truck Transportation Act</i> operating licenses	●	●	●	●	●	○	●	●	●	●
Overtime pay: $1\frac{1}{2} \times$ regular rate for each hour in excess of 60 in a work week; based only on hours driver is directly responsible for truck.										
Elect to work employees may choose to work when requested and may refuse work without penalty.	●	●	●	●	●	●	○	●	●	○
Public Holidays: General standard does not apply, but entitled to $1\frac{1}{2} \times$ regular rate for hours worked on the holiday.										
Embalmers and Funeral Directors	●	○	○	○	●	●	●	●	●	●
Farm employees who are directly employed in primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish. (Also see: <i>Harvesters, 'Near Farming', Landscape gardeners</i>)	○	○	○	○	○	○	○	○	●	●

Job Categories	Minimum Standards									
	1	2	3	4	5	6	7	8	9	10
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'Near farming'. Workers directly employed in mushroom growing; growing of flowers, trees and shrubs for the retail and wholesale trade; growing, transporting and laying of sod; breeding and boarding of horses on a farm; or the keeping of fur-bearing mammals under the <i>Fish and Wildlife Conservation Act</i> , 1997 for propagation or commercial production of pelts. (Also see: Farm employees, Harvesters, Landscape gardeners)	●	○	○	○	○	○	○	●	●	●
Firefighters	●	○	○	○	●	○	○	●	●	●
Fishers (commercial)	○	○	○	○	○	○	○	○	●	●
Fresh fruit, vegetable canning, processing and packing or distribution: seasonal employees (with the employer not more than 16 weeks in a calendar year).	●	●	●	●	●	●	●	●	●	●
Overtime pay: $1\frac{1}{2} \times$ regular rate for hours in excess of 50 in a work week.										
Harvesters of fruit, vegetables and tobacco (Also see: Farm employees, 'Near Farming', Landscape gardeners)	●	○	○	○	○	○	●	●	●	●
Minimum Wage: Special rules for piece work rates and deemed payments of wages for providing room and board. See Minimum Wage Fact Sheet.										
Paid Public Holidays: Standard applies after 13 weeks or more with an employer. In some cases, may be required to work on a public holiday - see the Public Holidays Fact Sheet (Continuous Operations).										
Vacation with Pay: Standard applies after 13 weeks or more with an employer.										

Job Categories	Minimum Standards									
● = covered ○ = NOT covered ◐ = special rules apply	1	2	3	4	5	6	7	8	9	10
Homemakers employed by a third party, such as an agency, to perform domestic services for a householder and/or family in their private residence.	◐	○	○	○	○	○	●	●	●	●
Minimum Wage: Employer not required to pay more than 12 hours/day at (at least) minimum wage.										
Homeworkers (employees who do work such as: word processing, telephone soliciting, online research, sewing, manufacturing, or preparing food for resale in their own home for an employer)	◐	●	●	●	●	●	●	●	●	●
Minimum Wage: 110 per cent of general minimum wage. See Minimum Wage Fact Sheet.										
Hospital employees	●	●	●	●	●	●	○	●	●	●
Public Holidays: In some cases, may be required to work on a public holiday - see the Public Holidays Fact Sheet. (See also: Elect to work employees)										
Hotel, motel, tourist resort, restaurant or tavern employees	●	●	●	●	●	●	○	●	●	●
Public Holidays: In some cases, may be required to work on a public holiday - see the Public Holidays Fact Sheet.										
Hotel, motel, tourist resort, restaurant or tavern employees who are provided with room and board and who work more than 16 and not more than 24 weeks per year	●	●	●	●	●	●	○	●	●	●
Overtime pay: $1\frac{1}{2} \times$ regular rate for each hour in excess of 50 in a work week										
Public Holidays: In some cases, may be required to work on a public holiday - see the Public Holidays Fact Sheet.										

Job Categories	Minimum Standards									
	1	2	3	4	5	6	7	8	9	10
● = covered ○ = NOT covered ● = special rules apply										
Hotel, motel, tourist resort, restaurant or tavern employees who are provided with room and board and who work 16 weeks or less per year	●	●	●	●	●	○	○	●	●	●
Overtime pay: $1\frac{1}{2} \times$ regular rate for each hour in excess of 50 in a work week.										
Hunting and fishing guides	●	○	○	○	●	○	○	●	●	●
Minimum Wage: Rates for less than five consecutive hours/day and for five or more hours/day. See Minimum Wage Fact Sheet.										
Information technology professionals who use specialized knowledge and professional judgement to work with information systems based on computers and related technologies.	●	○	○	○	○	○	●	●	●	●
Landscape gardeners	●	○	●	●	●	○	○	●	●	●
Liquor servers	○	●	●	●	●	○	○	●	●	●
Minimum Wage: (special liquor servers rate), does not include tips and gratuities. See Minimum Wage Fact Sheet. Public Holidays and Overtime Pay: exemption and/or special rules may apply - see Hotel, motel etc.										
Maintenance employees working on site on buildings, structures, sewers, pipelines, mains, tunnels or other works except roads.	●	●	●	●	●	●	●	●	●	○
Termination Notice/Pay, Severance Pay: Exempted from severance pay.										
Managerial and supervisory employees	●	○	○	○	●	○	●	●	●	●

Job Categories	Minimum Standards									
	1	2	3	4	5	6	7	8	9	10
● = covered ○ = NOT covered ● = special rules apply										
Part-time employees unless employed in an exempted industry or occupational group.	●	●	●	●	●	●	●	●	●	●
Professionals Employees who are:	○	○	○	○	○	○	○	○	○	●
<ul style="list-style-type: none"> qualified practitioners of architecture, law, professional engineering, public accounting, surveying, and veterinary science; registered practitioners of chiropody (including podiatry), chiropractic, dentistry, massage therapy, medicine, optometry, pharmacy, physiotherapy or psychology; registered practitioners under the <i>Drugless Practitioners' Act</i> (e.g., naturopaths, osteopaths) teachers, as defined in the <i>Teaching Profession Act</i>; and students training for these professions. 										
Emergency Leave may not be taken where it would constitute an act of professional misconduct or a dereliction of professional duty.										
Professionals - registered practitioners under Schedule 1 of the <i>Regulated Health Professions Act, 1991</i> , not listed in the previous section. Audiologists, dental hygienists, dental technologists, denturists, dieticians, medical laboratory technologists, medical radiation technologists, midwives, nurses, occupational therapists, opticians, respiratory therapists and speech language therapists	●	●	●	●	●	●	●	●	○	●

Job Categories	Minimum Standards									
	1	2	3	4	5	6	7	8	9	10
● = covered ○ = NOT covered ○ = special rules apply										
Emergency Leave may not be taken where it would constitute an act of professional misconduct or a dereliction of professional duty. (See also: Hospital employees)										
Registered real estate salespersons working for a registered broker.	○	○	○	○	○	○	○	○	●	●
Residential care workers who care for or supervise children or developmentally handicapped persons in a residence and live in the residence when working.	●	○	○	●	○	○	●	●	●	●
Minimum Wage: Hourly minimum wage entitlement to a maximum of 12 hours a day, unless employee provides the employer with an accurate daily record of hours worked, in which case the daily maximum is 15 hours.										
Free time: 36 hours per work week, which are to be consecutive unless the employee consents to another arrangement. If an employee consents to work during free time, wages are calculated at $1\frac{1}{2}$ x the regular rate for time worked or time in lieu may be added to one of next eight free time periods.										
Salespersons - commission who normally sell away from their employer's office or plant (except those who sell on a route).	○	○	○	○	○	○	○	○	●	●

Job Categories	Minimum Standards									
● = covered ○ = NOT covered ◐ = special rules apply	1	2	3	4	5	6	7	8	9	10
Salespersons - commission in automobile sector	◐	●	●	●	●	●	●	●	●	●
Minimum Wage: Maximum pay period of one month. Reconciliation periods for wages are:										
<ul style="list-style-type: none"> • Jan. 1 - Mar. 31 • April 1 - June 30 • July 1 - Sept. 30 • Oct. 1 - Dec. 31 										
Students under 18 who:	◐	●	●	●	●	●	●	●	●	●
<ol style="list-style-type: none"> 1. Work 28 hours or less a week during the school term or 2. Work during school holidays. 										
Minimum Wage: (special student rate). See Minimum Wage Fact Sheet.										
Students employed:	○	●	●	●	●	○	○	●	●	●
<ul style="list-style-type: none"> • to instruct or supervise children, or • at a camp for children, or • directly in a recreation program operated by a charitable organization 										
Superintendents, janitors and caretakers of a residential building who reside in the building.	○	○	○	○	●	○	○	●	●	●
Swimming pools: Persons employed to install and maintain swimming pools.	●	○	●	●	●	○	○	●	●	●
Taxicab drivers	●	●	●	●	●	○	○	●	●	●

What if the employer does not follow the *ESA*?

If an employee thinks the employer is not complying with the *ESA*, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the *ESA*.

This Fact Sheet provides general information about who is and isn't covered by the *Employment Standards Act, 2000 (ESA)* and its regulations. For complete information please refer to the *ESA* and the regulations.

Need More Information?

If you have questions about the *Employment Standards Act*, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the *Employment Standards Act*:

- Ministry of Labour website: www.gov.on.ca/lab
- Ministry of Labour Publications Sales unit: 1-800-809-4731

ESA Fact Sheets are available on the following subjects:

<input type="checkbox"/> Agricultural Workers	<input type="checkbox"/> Minimum Wage
<input type="checkbox"/> Domestic Workers	<input type="checkbox"/> Pregnancy Leave & Parental Leave
<input type="checkbox"/> Emergency Leave	<input type="checkbox"/> Public Holidays
<input type="checkbox"/> Family Medical Leave	<input type="checkbox"/> Retail Workers
<input type="checkbox"/> Frequently Asked Questions	<input type="checkbox"/> Role of the Ministry of Labour
<input type="checkbox"/> Homeworkers	<input type="checkbox"/> Termination of Employment & Severance Pay
<input type="checkbox"/> Hours of Work & Overtime	<input type="checkbox"/> Vacation
<input type="checkbox"/> How Are You Covered by the <i>ESA</i> ?	<input type="checkbox"/> What Young Workers Should Know
<input type="checkbox"/> How to File a Claim	

*This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the *ESA*, please refer to the Employment Standards Act, 2000 (*ESA*) and regulations.*

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the *ESA* can also be found at the *Employment Standards Act* section of the Ministry of Labour's website: www.gov.on.ca/lab. You can order copies of the *ESA* and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at www.e-laws.gov.on.ca or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.



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